

# 2002 State Bar Meeting Identity Theft: The New Frontier



## Legal Framework and Lender Perspective

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# Identity Theft Legislation



- ⌘ Criminal Penalties
- ⌘ Consumer Education and Assistance
- ⌘ Credit Bureau Obligations
- ⌘ Lender & Retailer Obligations
- ⌘ Victim Access to Information
- ⌘ Restrictions on SSN Use
- ⌘ Card Number Truncation
- ⌘ Notice of Security Breach



# Calif ID Theft Legislation



## ⌘ SB 125 (2001/enacted)

- ☑ Victim access to information

- ☑ Citations:

  - ☒ Civil Code 1748.95

  - ☒ Financial Code 4002, 22470

  - ☒ Government Code 7480

  - ☒ Penal Code 530.8



# Calif ID Theft Legislation



## ⌘ AB 245 (2001/enacted)

- ☑ Increased penalties

- ☑ Penal Code 530.5

## ⌘ AB 1862 (2000/enacted)

- ☑ Victim assistance

- ☑ Penal Code 530.7

## ⌘ SB 1897 (2000/enacted)

- ☑ Victim assistance

- ☑ Penal Code 530.5 & 530.6



# Calif ID Theft Legislation



## ⌘ AB 655 (2001/enacted)

- ☑ Opt out from credit card ITAs
- ☑ DMV reports for trade line blocking
- ☑ Harder to unblock trade line
- ☑ Deletion of fraudulent inquiries
- ☑ Prohibit sale of certain debts
- ☑ Address & other verifications
- ☑ Private right of action
- ☑ SSN restrictions



# Calif ID Theft Legislation

## ⌘ AB 655 (continued)

### ☐ Citations:

☒ Civil Code 1785.10; 1785.11.8; 1785.16;  
1785.16.1-.3; 1785.20.3; 1786; 1786.2; 1786.10;  
1786.11; 1786.16; 1786.18; 1786.20; 1786.24;  
1786.26; 1786.28; 1786.29; 1785.50; 1786.52;  
1786.53; 1798.92-.97



# Calif ID Theft Legislation



## ⌘ SB 168 (2001/enacted)

- ☑ CB Security alerts & freezes

- ☑ SSN Restrictions

- ☑ Civil Code 1785.15; 1785.11.1-.6: 1798.85 et seq.

## ⌘ SB 1730 & AB 1068 (2002/pending)

- ☑ "Clean-up" AB 655 and SB 168

## ⌘ SB 1386 (2002/pending)

- ☑ Disclosure of security breaches



## Calif ID Theft Legislation

# Credit Bureau Obligations



⌘ Trade Line Blocking (AB 655)

⌘ Delete Fraudulent Inquiries (AB 655)

⌘ Opt Out of CB Marketing (AB 655)

⌘ Security Alert (SB 168)

⌘ Security Freeze (SB 168)



## Calif ID Theft Legislation

# Lender & Retailer Obligations



- ⌘ Card Number Truncation (Civil C. 1747.9)
- ⌘ Receive Security Alerts & Freezes (SB 1730)
- ⌘ Address Verification (AB 655)
- ⌘ Verify Consumer's ID if Alerted (AB 655)
- ⌘ Sale of Debt if T/L Blocked (AB 655)
- ⌘ Enforce Debt if ID Theft Claimed (AB 655)
- ⌘ Notice of Security Breach (SB 1386)



Calif ID Theft Legislation

# Restrictions on SSN USE

(SB 168)

Prohibits Following Uses of SSN:

- ⌘ Publicly “post or display”
- ⌘ Print on Access Card
- ⌘ Require Non-secure Internet Transmission
- ⌘ Require for Web Access (w/o PIN/Pwd)
- ⌘ Print on Materials mailed to SSN Holder



## Calif ID Theft Legislation

# "Clean Up" Bills

(SB 1730 & AB 1068)

- ⌘ Limits Scope of "Credit Transactions"
- ⌘ Address Match: "Reasonable Certainty"
- ⌘ More Flexibility in Address Verification
- ⌘ Exempt ACH Transactions from SSN Restrictions until 7/1/03
- ⌘ Limited Exemptions from Freeze & Alert Requirements



# Lender Perspective

- ⌘ Big Problem; Getting Bigger
- ⌘ ~500,000 Consumer Victims/Year
- ⌘ \$\$ Billions in Losses and Expenses
- ⌘ Low/No-Touch Transactions
- ⌘ Competition; Economies of Scale
- ⌘ The Internet: All the Information an Identity Thief Could Ask For



# Forms Of Identity Theft/Fraud

## ⌘ Limited-scope ID Theft

☐ E.g., Stolen credit card

## ⌘ Full-blown ID Theft

☐ E.g., Account take over

## ⌘ Identity Fraud

☐ Creation of a new identity

## ⌘ Identity “Enhancement”

☐ E.g., Credit repair clinics



# Detection & Deterrence



- ⌘ SSN Verifications

- ⌘ Fraud Databases

- ⌘ Cross-check Internal Information

- ⌘ Other Logical Testing



# Lender Frustrations



- ⌘ Few Cases Result in Recovery or Prosecution
- ⌘ No Coordination Across Jurisdictions and Victims
- ⌘ Confusion with “Privacy” Issues
- ⌘ Consumer Education & Behavior Lag